

PT 97-12

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

JASPER COUNTY BOY'S PARK, INC)		
Applicant)		
)	Docket #	95-40-4
v.)		
)	Parcel Index #	12-12-200-059
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John L. Swartz appeared on behalf of the Jasper County Boy's Park, Inc.

Synopsis:

The hearing in this matter was held at 101 West Jefferson Street, Springfield, Illinois, on June 11, 1996, to determine whether or not Jasper County parcel No. 12-12-200-059 should be exempt from real estate tax for the 1995 assessment year.

Mr. Gary Joe Johnson, the treasurer of the Jasper County Boy's Park, Inc. (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include first, whether the applicant is a charitable organization. The second issue is whether this parcel was owned by the applicant during all or part of the 1995 assessment year. The final issue is whether this applicant was in the process of adapting this parcel for primarily charitable use or actually using said parcel for primarily charitable purposes during the 1995 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is

a charitable organization. It is further determined that this parcel was owned by the applicant during the period January 12, 1995, through December 31, 1995. Finally, it is determined that the portion of the building on this parcel eventually leased to the Cooperative Extension Service, consisting of 989 square feet and a proportionate part of the land, was being adapted for primarily exempt use during the period January 12, 1995, through December 31, 1995, and the remainder of the building and a proportionate part of the land, were not being adapted for primarily exempt use, nor was there actual exempt use during the 1995 assessment year.

Findings of Fact:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that the parcel here in issue did not qualify for exemption during the 1995 assessment year, was established by the admission in evidence of Department's Exhibits numbered 1 through 8C.

2. On September 11, 1995, the Jasper County Board of Review transmitted an Application for Property Tax Exemption To Board of Review, concerning this parcel for the 1995 assessment year to the Department. (Dept. Ex. No. 1)

3. On January 25, 1996, the Department denied the exemption of the applicant for this parcel for the 1995 assessment year, finding that this parcel was not in exempt use. (Dept. Ex. No. 2)

4. By a letter received by the Department on February 6, 1996, the treasurer of the applicant requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing in this matter, which was held on June 11, 1996, was held pursuant to that request.

6. The applicant acquired the parcel here in issue pursuant to a trustee's deed dated January 12, 1995. (Dept. Ex. No. 1B)

7. The Applicant was incorporated pursuant to the "General Not For Profit Corporation Act" of Illinois on July 11, 1966, for the following purposes:

To operate facilities to provide recreation for the children of Jasper County, Illinois.

8. Before 1995, the applicant owned 13 acres of land, on which were located 5 baseball and softball diamonds, on which 460 young boys and girls between 7 and 18 years of age played baseball or softball during the summer months. (Tr. pp. 10 & 11)

9. The applicant allows boys and girls within the above identified age range to play baseball or softball regardless of their ability to pay. (Tr. p. 11)

10. The high school and the junior high school also practice and play their baseball and softball games on these 5 diamonds, owned by the applicant. (Tr. pp. 11 & 12)

11. In Department Docket Nos. 88-40-160 and 90-40-8 the Department determined that the parcels which contain the 13 acres on which the applicant's baseball and softball diamonds are located, qualified for exemption from real estate taxation. (Dept. Ex. Nos. 3J & 3K)

12. There is no movie theater, YMCA or YWCA in Jasper County. Consequently, there is not a lot for youth to do there in the wintertime. (Tr. p. 12)

13. During 1985, the General Assembly passed the Jasper County Civic Center Law, which became effective on September 3, 1985. (70 **ILCS** 220/4-1) The last provision of that act exempts all property of that taxing district from real estate taxation. (70 **ILCS** 220/4-29)

14. Mr. Johnson testified that for political reasons the local officials had never activated the Jasper County Civic Center Authority. (Tr. p. 16)

15. Beginning in the winter of 1993, there was local interest in the County to have a youth center. A committee was formed and it was decided to build and operate the center through the applicant. (Tr. p. 16)

16. After the acquisition of the land on January 12, 1995, the applicant began fundraising activities. During February 1995, an architect was obtained who prepared plans for the building. The applicant proceeded to raise \$105,000.00 in public contributions and government grants. On August 25, 1995, the groundbreaking for the building was held and construction began. (Tr. pp. 18-20)

17. The construction proceeded to completion, and the grand opening of the center was held on March 10, 1996. The applicant began to actually use the building for meetings during February, 1996. (Tr. pp. 20 & 21)

18. The total cost for the construction of the building was \$235,000.00. The applicant obtained a bank loan for the balance of the cost of construction, over and above the \$105,000.00 which had been raised. (Tr. p. 25)

19. The building contains a gymnasium with a stage and storage rooms at one end. At the other end of the building is a kitchen, a large meeting room and an office. In the center of the building are a lobby and restrooms. On the far side of the lobby are three offices and a mechanical-storage room. (Dept. Ex. No. 1M)

20. The total useable space in this building is approximately 7334 square feet. (Dept. Ex. No. 1N)

21. This parcel also contains two parking areas, one on each side of the building. (Dept. Ex. No. 3F)

22. Since the building has been open, the building has been rented out by the applicant to various groups pursuant to the applicant's rental policy. (Dept. Ex. No. 1-0) The applicant's rental rates are similar to those of the St. Thomas parish center. (Tr. p. 30) St. Thomas is the local Roman Catholic Parish.

23. The applicant's rules for the center provide that fees may be waived in case of financial need, at the discretion of the center's committee. (Appl. Ex. No. 3) Mr. Johnson testified that as of the date of the hearing, the building rental fees had not been waived or reduced. (Tr. p. 47)

24. During the period from the middle of February, 1996 until the date of the hearing on June 11, 1996, the activities at the building included approximately eight youth activities and approximately 34 private rentals. The private rentals were for family gatherings, wedding rehearsal dinners and showers, as well as rentals by women's clubs, insurance companies, political parties, a photographer, and United Technologies Corporation. (Dept. Ex. No. 3L, Tr. pp. 33, 37-40)

25. It is the intent of the applicant to use this building primarily for youth intramural sports, 4-H and other activities. As of the date of the hearing in this matter, these activities had not begun. The applicant hoped to begin organizing and scheduling these activities in August or September of 1996, after the completion of the summer baseball season. (Tr. p. 29, Dept. Ex. Nos. 1 and 1D)

26. Mr. Johnson testified that the applicant has obtained a bingo license and intends to start playing bingo in the gymnasium on this parcel on Thursday nights beginning in August or September of 1996. (Tr. pp. 26 & 37)

27. On April 1, 1996, shortly after the completion of the building on this parcel, the applicant entered into a lease with the Cooperative Extension Service of the College of Agriculture of the University of Illinois, for approximately 989 square feet of the building, consisting of rooms 101, 102, and 103, and 110 square feet of room 104, which is the Mechanical/Storage room. The term of this lease is from July 1, 1996 through June 30, 1997. (Dept. Ex. No. 1N & Appl. Ex. No. 1)

28. Mr. Johnson testified that in 1994 the Cooperative Extension Service was about to be eliminated from Jasper County when a referendum to finance it was passed. The Service operates the 4-H which works with youth. The applicant felt that the relationship would be compatible with its goals. In addition, the lease income would provide the applicant with some operating income. (Tr. p. 23)

29. I take Administrative Notice of the decision in the matter of the Marion County Extension Building Association, Docket No. 84-61-10, in which it was determined that the Cooperative Extension Service qualified for exemption as an agricultural organization.

30. Based on the foregoing, I find that the applicant acquired this parcel on January 12, 1995, and immediately began to construct a building thereon.

31. I further find that as of the date of the hearing in this matter, June 11, 1996, with the exception of the area leased to the Cooperative Extension Service, the building on this parcel was not being primarily used for charitable purposes

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

35 **ILCS** 200/15-125 provides in part as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any...charitable institution which meets the qualifications for exemption, are exempt.

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v.

National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

It has previously been established that the applicant acquired this parcel on January 12, 1995. It has also been established that the Department has previously determined that the applicant is a charitable organization in Department Docket Nos. 88-40-160 and 90-40-8. The primary issue in this matter then is whether the applicant was in the process of adapting this parcel for primarily charitable use during the period January 13, 1995, through December 31, 1995.

The evidence in this matter clearly establishes that the applicant used the building on this parcel from its completion in February, 1996 to the date of this hearing, June 11, 1996, primarily by renting it out to various private parties for profit, including for-profit corporations. The use of this building for youth activities was merely incidental. Where, as here, the property as a whole was used for both exempt purposes and nonexempt purposes, the property will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is merely incidental. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971) and MacMurray College v. Wright, 38 Ill.2d 272 (1967). That is clearly not the case here.

The Illinois Courts have consistently held that property which is leased or otherwise used with a view to profit, as the building on this parcel was during the period of March 10, 1996 through June 11, 1996, does not qualify for

exemption, even if the net income from said leasing or use for profit is used for exempt purposes. People ex rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). See also The Salvation Army v. Department of Revenue, 170 ILL.App.3d (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit, or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934).

While the applicant intended, after the summer baseball season, in August or September of 1996, to begin organizing and preparing for youth activities at the center, it had not done so on the date of the hearing, June 11, 1996. In the case of People ex rel. Pearsall v. The Catholic Bishop of Chicago, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt.

In the recent case of Weslin Properties, Inc. v. Department, 157 Ill.App.3d 580 (1987), the Appellate Court held that a portion of the property which was under development and adaptation for exempt use, qualified for exemption. The remaining portion of the Weslin Properties parcel, which at the time of the hearing had not been developed and which was not in exempt use, the Court held did not qualify for exemption.

Applicant, in its brief, contends that if this parcel were owned and developed by the Jasper County Civic Center Authority, pursuant to the Jasper County Civic Center Law, it would have been exempt. In view of 70 **ILCS** 220/4-29, this is true. However, the organizational committee chose to use the applicant to own the property and to build the building. This method, applicant contends, resulted in reduced financing costs and kept the residents of Jasper County from being taxed. This is also true. However, this choice requires that the exemption of the applicant concerning this parcel and the building thereon

be determined by the constitutional provision and statutory provisions concerning the exemption of charitable organizations and not the exemption provision concerning a Jasper County Civic Center Authority. In view of the foregoing discussion, it is clear that the applicant does not meet the requirements for a charitable exemption.

Concerning the approximately 989 square feet of the building on this parcel leased to the Cooperative Extension Service, in the case of Childrens Development Center v. Olson, 52 Ill.2d 332 (1972), the Supreme Court held that where one exempt entity leases property to another exempt entity, which uses said property for an exempt purpose, the lease will not be considered a lease for profit. Since the Department had previously determined that the Cooperative Extension Service is an exempt agricultural organization, the 989 square feet leased to the Cooperative Extension Service and a proportionate part of the land qualified for exemption during the period January 12, 1995 through December 31, 1995.

While it is clear that from the date of the completion of the building until the date of the hearing most of the building did not qualify for exemption, the applicant may apply for exemption for a later year after it has had an opportunity to get its intended youth programs in place.

I therefore recommend that 13% of the building on Jasper County parcel No.12-12-200-059 and also 13% of the land be exempt for 97% of the 1995 assessment year.

I further recommend that 87% of the building on Jasper County parcel No. 12-12-200-059 and also 87% of the land remain on the tax rolls for 97% of the 1995 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
March 26, 1997